Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Closed Captioning and Video Description of Video Programming	)	MM Docket No. 95-176
	)	

COMMENTS

This author, Delbert A. Whetter, seeks to comment on the Federal Communications Commission ("FCC") Notice of Inquiry addressing the closed captioning. I am a second-year law student at the George Washington University Law School and, along with fellow second-year law student Malik Shakur, have been monitoring closed captioning practices as part of a group focusing on telecommunications accessibility. While there are numerous issues I would like to address, I will focus primarily on the problems of accuracy and quality of captions, and the continuity of captions for television and video programming.

Response to NOI - Part VII: Closed Captioning Accuracy

Through daily monitoring of television programming, it has been observed that a significant portion of its broadcasts and cable programming are being televised without the line 21 signals containing closed-captioning. Television stations, cable programmers, and cable service providers should be compelled to improve its closed-captioning practices. The current condition of closed-captioning technology sufficiently exhibits the need for the FCC to place minimum captioning standards upon all levels of television program transmission.

This lack of captioning has been noticed during various times of the day, and with different types of programs. The problem occurs most consistently during the early evening hours, when syndicated reruns are aired. However, it has also been noticed that, on occasion, some first run programs are being broadcast without captions, or with captioning that is jumbled and indecipherable. There are also numerous instances of television practices that undermine the expansion as well as the continuity of closed-captioned material available in the marketplace.

Examples follow:

- Video programs initially released on videotape for rental and purchase (new releases) are closed-captioned, but when aired on television on a later date, they are not shown with line 21 closed-captioning data. [1]

- Video programs shown with closed captions during its first-run broadcast, but in syndication or reruns, they are shown without closed captions or contain corrupted and indecipherable captioning.[2]

- Video programs shown with closed captions during its first run broadcast, but when released in videotape format for subsequent purchase and rentals, they are released with out closed-captions. [3]

- Video programs advertised or slated to show closed captions during its first-run broadcast are shown without closed captioning data or are corrupted and indecipherable.

The Benefits of Closed-Captioning - Background.

Television today has advanced beyond its original design. Television is no long limited to being merely a form of entertainment. It is now used to educate: through public broadcast stations, and cablevision stations which are geared towards educational programming. Television also informs the public via the evening news, and the ever popular prime-time news programs. These two examples illustrate the expanding significance of television in our lives.

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[1] e.g. The movies "Flashdance" and "Wargames" were closed captioned when initially released on videotape, but when shown on Saturday afternoon premieres, they are shown absent closed captioning.

[2] "Three's Company", a situation comedy that was closed captioned during its first-run broadcast, was popular among hearing-impaired viewers. Now, in syndication, its rebroadcasts are shown absent closed captioning. Hearing impaired fans of the show are excluded from enjoying their favorite episodes, or any episode for that matter.

[3] e.g. A popular mini-series may be captioned during its premiere and subsequent re-run showings on a television station, but when they are released in videotape format, they do not contain closed captioning.

The benefits of closed-captioning to the hearing-impaired are quite obvious. Closed-captioning allows persons with hearing impairments to participate in a forum which has become an essential part of the lives of most Americans. The significance of this is heightened when one factors in the enormous amount of information and data that are available to the rest of the community through auditory means of communication, but inaccessible to deaf people. Closed captioning adds another important resource for hearing-impaired that have few resources to rely on from the outset.

The need for wider closed-captioning is magnified once we consider its benefits to those outside the hearing impaired community. Closed captioning can be a useful tool for school children who are learning to read. By following the captioned text, along with the verbal dialogue, a child's ability to read is thereby further facilitated.

Closed-captioning also benefits those who are learning to speak English. By reading the text while simultaneously listening to the audio signal, a person may gain a better comprehension of the english language. In fact, using closed-captioning has become an increasingly popular way for foreign-speaking individuals to learn to speak and read English. Many more examples of the benefits of closed-captioning exist beyond these, and they are also equally compelling.

Legal Authority (also in response to Part VII, Paragraph 36)

Congressional Legislation

Congress enacted the Communications Act of 1934 which called for the creation of the Federal Communications Commission. 47 U.S.C.A. § 151 (1995). In creating the FCC, it was Congress' intention to grant broad authority upon the Commission so as to have regulatory control over this growing technology. F.C.C. v. Midwest Video Corp. Inc., 99 S.Ct. 1435 (1979).

Among these several powers and duties granted to the FCC is the duty to "As public convenience, interest, or necessity requires . . . Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest...". 46 U.S.C.A. § 303 (g) (1995).

It is the public interest, convenience, and necessity requirement which allows the FCC to exercise its broad authority to ensure that the needs of the public are being met by its broadcasters. W.O.K.O. v. F.C.C., 153 F.2d 623 (D.C. Cir. 1946). To date, the FCC has left the implementation of closed-captioning to the discretion of individual broadcasters, but the FCC has also warned that it might one day issue minimum standards for closed-captioning as new technology becomes available. Cal. Assoc. Of the Physically Handicapped, Inc. v. F.C.C., 840 F.2d 88, 94 (D.C. Cir. 1988)

In 1990, Congress passed legislation that made it mandatory that all television sets (over thirteen inches) manufactured or imported, for sale in the United States, be equipped with the built-in decoder circuitry designed to display the closed-captioning signal. Television Decoder Circuitry Act of 1990, 47 U.S.C.A. § 330 (1995).

In 1992, Congress passed The Cable Television Consumer Protection and Competition Act of 1992 (Cable Act of 1992) in which it imposed carriage obligations on the "must-carry" stations provided by cable television systems. Cable television systems are required by the FCC, in the case of local commercial broadcast and noncommercial broadcast stations, to "include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval. . ." 47 CFR § 76.64. The cable system operators are also prohibited from taking any action to "remove or alter closed captioning data contained on line 21 of the vertical blanking interval" in addition to being required to "deliver intact closed captioning data contained on line 21 of the vertical blanking interval, as it arrives at the headend or from another origination source, to subscriber terminals (and when so delivered to the cable system) in a format that can be recovered and displayed by decoders . . ." 47 CFR § 76.606.

When read in conjunction with the Television Decoder Circuitry Act of 1990, The Cable Act of 1992, and most recently, the Telecommunications Act of 1996, would lead one to draw the logical conclusion that technological advancements have been made in regards to closed captioning.

In an earlier case, the court recognized the existence of a national policy in extending "increased opportunities to the hearing impaired", but decided that it would defer to the FCC and refrain from "delineating standards . . . or to require specific Commission procedures at this time" in contemplating closed captioning policy in relation to commercial broadcasters. However, the court made note of the Commission's continuing efforts to expand and move forward in the area of closed captioning, and commented that it was satisfactory but may later cease to be sufficient in addressing the closed captioning issue.

> Recognizing that the Commission possesses special competence in weighing the factors of technological feasibility and economic viability that the concept of the public interest must embrace, we defer today to its judgment. However, should the commission fail to fulfill its obligations to the nation's hearing impaired minority, as we have indicated above, judicial action might become appropriate at a later date. Gottfried v. FCC, 655 F.2d 297, 210 U.S.App.D.C. 184 (1981)

In a footnote, the court made note of an oral argument reflecting a FCC record stating, "(I)f at a later date, it is demonstrated that the [closed captioning] project is

not successful in making television programming more available and enjoyable to the hearing impaired, then it may be necessary for the Commission to determine if a rulemaking is warranted to ensure that the hearing impaired are not deprived of the benefits of television". Id., quoting 72 FCC2d 273 (1979).

The recently enacted Telecommunications Act of 1996 reflect congressional interest in examining whether closed captioning technology is truly being utilized to its maximum benefit and whether there is room for an expanded role by the FCC in mandating closed captions.

The Americans with Disabilities Act

While there are little case law supporting legal arguments for enforcing closed captioning today, there are some novel approaches that the FCC may find persuasive in contemplating their role in mandating closed captioning.

The applicable statute is Title III of the Americans with Disabilities Act, addressing public accommodations and services operated by private entities. It states that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any public accommodation by an person who owns, leases (or leases to), or operates a place of public accommodation. " 42 U.S.C. § 12181 (a) "Denial of Participation".

42 U.S.C. § 12181 (b) (1) (A)(ii), entitled "Participation in unequal benefit" also states that "[i]t shall be discriminatory to afford an individual or class of individuals on the basis of a disability or disabilities of such individuals or class, directly, or through contractual, licensing,or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

42 U.S.C. § 12181 (b) (2) (A) entitled "Specific prohibitions - Discrimination" states that discrimination includes:

> (ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities,privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;
>
> (iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of

auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden.

The relevant definitions as set forth by 42 U.S.C. § 12181 are:

(2) Commercial facilities -
a) that are intended for non residential use; and
b) whose operations will affect commerce

and:

(7) the following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce-

C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment; . . .
F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital or other service establishment; . . .
I) museum,library, gallery,or other place of public recreation; . . .
L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

"Auxiliary aids and services" mean:
A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; . . .
C) acquisition or modifications of equipment or devices; and
D) other similar services and actions.

42 U.S.C. § 12102.

Are "places of public accommodations" within meaning of Title III of the Americans with Disabilities Act limited to actual physical structures?

The "public accommodations" definition does not necessarily restrict itself to actual physical structures as it appears to in § 12181. It has been stated that the ambiguity in subsection (F) which sets forth various "services" such as "travel services" and "offices" and "other service establishments", along with agency regulations and public policy concerns lead them to the conclusion that such a harsh interpretation was not intended.

By including "travel service" among the list of services considered "public

> accommodations," congress clearly contemplated that "service establishments" include providers of services which do not require a person to physically enter an actual physical structure . . . It would be irrational to conclude that persons who enter an office to purchase services are protected by the ADA but persons who purchase the same services over the telephone or by mail are not. Carparts Distribution Center, Inc. v. Automotive Wholesaler's Ass'n of New England, Inc. 37 F.3d 12 (1994)

Carparts is a suit challenging the decision of a trade association, a "private entity that operate a self-insured plan" (Id. At 19, n. 9), in their decision in limiting life time health benefits for illnesses related to AIDS. The lower court ruled in favor of the trade association's motion in summary judgment, stating that the term was limited to "actual physical structures with definite physical boundaries which a person physically enters for the purpose of utilizing the facilities or obtaining services therein." Id. At 18.

The appellate court vacated this judgment and remanded to trial court for further proceedings, finding that the plain meaning of the terms do not require physical structures for persons to enter, stating that "Even if the meaning of 'public accommodations' is not plain, it is, at worst, ambiguous. This ambiguity together with agency regulations and public policy concerns, persuades us that the phrase is not limited to actual physical structures." Id. At 19.

Carparts took notice of "clear legislative history" supporting this interpretation through its intent to ensure that people with disabilities have "equal access to the array of goods and services offered by private establishments and made available to those who do not have disabilities". Id.

However, the court did take care to take note of the ambiguity whether the ADA was intended to "provide access to whatever product or service the public entity may offer" or in addition, to "shape and control which products and services may be offered". The court explained that its language left it with the impression that the term was limited to physical structures, "or something analogous such as access provided through telephone lines, messengers, *or some other medium* ", there was nothing in the ADA's legislative history that specifically "precludes an extension of the statute to the substance of what is being offered". The court drew an analogy to a tool manufacturer making sufficient accommodations within its retail outlets for every disability, yet declining to make the most minor modifications for its products to make them usable by persons with disabilities. Id at 20 (italics supplied).

The court pointed out that this reasoning was consistent with the legislative history of the ADA in "invoking the sweep of Congressional authority . . . In order to address the major areas of discrimination faced day-to-day by people with disabilities." Carparts, citing 42 U.S.C. § 12101(b)(1).

The court closes by stating that neither Title III or its regulations make any mention of physical boundaries or physical entry: "Many goods and services are sold over the telephone or by mail with customers never physically entering the premises of a commercial entity to purchase the goods or services. To exclude this broad category of businesses . . . would run afoul of the purposes of the ADA and would severely frustrate Congress's intent that individuals with disabilities fully enjoy the goods, services, privileges and advantages, available indiscriminately to other members of the general public". Id.

Soutenborough v. National Football League : Direct Repudiation?

However, nine months later, the Sixth Circuit of the United States Court of Appeals made a ruling that seemingly takes the exact opposite position in Soutenborough v. National Football League, 59 F.3d 580, in which plaintiffs contended that the NFL, its affiliates, and the media, through the "blackout rule" violated the ADA, in addition to other statutes, by denying football fans local television coverage with radio broadcasts as the only alternative. The court held, relying only on the plain language of the ADA, that none of the defendants fell under the twelve "public accommodations" categories identified in the statute, and that they were not "places" of public accommodation. Id. At 582.

The court relied on the definition of "place" under 28 C.F.R. § 36.104, as a "facility operated by a private entity, whose operations affect commerce and fall within at least one of the [twelve 'public accommodation' categories]", and set forth the numerous definitions of "facility" as being physical in nature. The court further takes note that the "service" of the defendants does not involve a "place of public accommodation", even though the game may be televised in such an establishment. It ends on a somewhat stronger note by stating that "plaintiff's argument that the prohibitions of Title III are not solely limited to 'places' of public accommodation contravenes the plain language of the statute". Id.

This closing statement by Soutenborough apparently is at odds with Carparts. A review of the treatment of the two cases reveal that neither have been reviewed by the Supreme Court as of date, nor have they been cited in future cases (although Carparts have been cited in 2 other cases since, but on issues unrelated to the use of the term "public accommodations"). [4]

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[4] On an interesting note, the lower court decision of Carparts, since vacated, was cited by a Sixth Circuit decision, Pappas v. Bethesda Hospital Association, (861 F. Supp 616, 619), in its ruling that "public accommodations" indeed was limited to physical structures, the same Circuit deciding the Soutenborough case with a similar ruling. It is not known if the Pappas ruling was overturned, but since Soutenborough relied entirely on its interpretation of the

Soutenborough involved defendants that were not necessarily in the business of directly providing service to its customers, but instead contracted out broadcast privileges of its games to media entities and subsequently restricted privileges to local media entities. The practical result was that all local individuals, disabled and non-disabled, were unable to view the games. The court, no doubt, found it difficult to place the defendants in the category of being a "place of public accommodation" when the service in question (or lack of same) were by a private entity that was not in the business of providing viewing privileges to television viewers. The practice, in addition, was not discriminatory to a class of disabled individuals based on their disability, but rather a blanket ban on all local residents in an effort to encourage attendance at its events when attendance was low. Id. At 581.

Indeed, the Soutenborough case makes its primary ruling on the fact that the blackout practice is "not discriminatory: it applies equally to both the hearing and the hearing-impaired populations." [5] The court seems to have addressed the "places of public accommodations" issue as an afterthought and it is clearly not necessary to the ruling recognizing that no discrimination exists in the black-out rule. Id. At 582.

Carparts addressed the issue of an entity directly providing services to its customers that affected commerce, and that which does not conduct business in a physical setting, or through physical means. A district case sheds light on the question of business conducted through non-physical settings or through physical means in Baker v. Hartford Life Insurance Company, 1995 U.S. Dist. Lexis 14103 (USDC N. Ill. E.D. 1995) in a freshly decided case.

Baker is a suit in which an eleven-year old plaintiff sued the defendant for a disability based refusal to provide health insurance. The defendant moved for

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"plain language" of the statute, Pappas's reliance on this vacated ruling will likely not bear directly on Soutenborough.

[5] The court concludes its first ruling on a rather cryptic statement on the "advent of devices that make radio transmissions accessible to persons with hearing impairments" that would allow both populations to "attain equal footing". The authors has no knowledge of any devices allowing the deaf population increased access to radio transmissions and broadcasts other than volume control devices and hearing-aids equipped to receive these types of transmissions. Suffice it to say, members of the hearing-impaired population capable of utilizing such volume control devices to further comprehension of these radio broadcasts would have little reliance on closed-captioning of television broadcasts (which utilize similar volume control devices) in the first place.

summary judgment, stating that plaintiff had no claim under Title III because they were not a "public accommodation" as defined under the ADA, as well as that Title V exempts them from liability.

Defendant claimed that the term "public accommodation" was limited to actual physical structures. Baker argued that the nondiscrimination mandate of the ADA applied to the defendant both because it is a "public accommodation and because it operates a place of accommodation." Id. At *7.

The court noted that "neither the Supreme Court, nor the Court of Appeals for the Seventh Circuit has interpreted the scope of Title II [sic] in regard to whether insurance companies that solicit business by mail and transact business by telephone are covered under the anti discrimination requirements of the ADA". Id.

The court noted that the list of twelve public accommodations included "an . . . Insurance office", which describes the defendant, and that the "place from which defendant's telephone communication with the plaintiff's father took place was an insurance office, so it was a public accommodation." The court further noted that the office was a place that "was own, leased, or operated by defendant, and plaintiff was denied a service of this office, insurance, on the basis of his disability." Id. At *9.

Baker goes on to refute the contention that the usage of the term "place" in the statute "imply a physical location", ruling that "contrary to defendant's argument, the ADA does not require a plaintiff to be 'physically present at the place of public accommodation' to be entitled to protection". It further states that

> [T]he statute forbids . . . Discrimination against an individual in the full and equal enjoyment of the goods, services, and so forth of a place of public accommodation, 42 USC § 12182(a), which discrimination can occur, as it is alleged to have occurred in the case at bar, when a plaintiff is not physically present at the place of public accommodation and only has contact with that place through his father by telephone and correspondence.

Id.

Closed Captioning and Broadcast Entities as Places Of Public Accommodations

From the reading of Soutenborough, it appears that little thought had been given to the issue of whether closed captioning of television broadcasts per se is invalid in the application to the "places of public accommodation" question. The court seems to be ambiguous on its understanding of the current status of the devices currently available and in development for the disabled community (see footnote 5 above). Furthermore, it takes a very narrow interpretation of what "places of public accommodation" entails, even though the matter at hand clearly does not involve discrimination of a disabled class and is not necessary to the ruling. Of important

note is the fact that *closed captioning* is not the primary service desired by plaintiffs, but rather the forced broadcast of programming that has been restricted from viewers in the immediate vicinity of the area. If the blackout rule is held to be non-discriminatory, then the plaintiff's legal arguments relating to closed captioning become moot. 59 F.3d at 582.

I believe the ADA extends to the "substance of what is being offered", meaning, services initiated by phone, mail, or "other mediums" (Carparts at 20) such as satellite/antenna broadcast transmission, and other transmissions provided directly to the customer through physical means to his place of residence, such as cable systems?

When a broadcast entity chooses to provide services to its customers, it does so in the same way a business would provide insurance coverage over the phone, or sends products through mail order, but in this case, the product or service is purely digital but is no less significant than goods having physical form.

With the skyrocketing increase of services and goods taking digital or electronic form, there is increasing acceptance that businesses that provide goods and services in digital and electronic forms are every bit as corporeal as a storefront selling baskets and food products.

An analogy would be that of a cellular phone company refusing service to the disabled, african-americans, or other protected classes. Congress clearly did not intend the courts to refrain from exercising its jurisdiction over such an appalling corporate practice merely because the service rendered was not in a "place of public accommodations" in a purely physical sense.

A further analogy could be made of a cellular phone corporation utilizing a transmitter technology that makes its carriage incompatible with special communications devices used by the disabled, such as alarm/911 devices or computer-aided voice devices for speech-impeded individuals. Should the cellular phone corporation be held responsible for ensuring that disabled customers receive full use and enjoyment of its services as its non-disabled customers? The purpose and mandate of the ADA certainly seems to encompass such an imposition of liability in both situations hypothesized above, and certainly in public policy it would be in the public interest.

The current closed captioning practices would also violate 42 U.S.C. § 12181 (b) (2) (A) (ii) and (iii) prohibitions against discrimination by failing to make "reasonable modifications in policies, practices, and procedures" when necessary to afford service to the disabled by ensuring that closed captioning signals are included in programs supplied to cable operators and affiliates when such exist. Subsection (iii) is violated by failing to take necessary steps to ensure that no individual with a

disability is "denied services . . . because of the absence of auxiliary aids and services". "Auxiliary aids and services" as set forth by § 12101 clearly include the practice of closed captioning and devices involved in transmission of closed captioning line 21 signals.

Captioning Problems Originating from Parent Network

To the extent that the problems originate at the parent network, the FCC has the existing authority "under 47 USCS § 303 to deny, or to refuse to renew, licenses as a means of eliminating undesirable network practices." 74 Am Jur 2d §164, citing National Broadcasting Co. (NBC) v. United States 319 US 190, 1010, 87 L.Ed 1344, 63 S.Ct 997 (Act granting authority to regulate chain broadcasting did not explicitly say the Commission had power to "deal with network practices found inimical to the public interest" but its "comprehensive mandate" to regulate it permitted it). See also GTE Service Corporation v. FCC, 474 F.2d 724 (1973).

The above cited case referred to the parent network of a chain broadcasting radio network but the ruling encompasses parent television networks that supply broadcast materials to its affiliates. The FCC relied upon 47 USCA § 303 (I) which states that the FCC has authority to make special regulations applicable to radio stations engaged in chain broadcasting. 47 USCA § 153 (b) states that "'Radio communication' or 'communication by radio' means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt,forwarding, and delivery of communications) incidental to such transmission" which includes televisions. The same statute provides the definition of "Chain broadcasting" as consisting of "simultaneous broadcasting of an identical program by two or more connected stations " 47 USCA § 153 (p).

The FCC Should Require Accuracy and Continuity.

This Notice of Inquiry reflects remarkable foresight by the FCC in anticipating a growing dissatisfaction with the current closed-captioning practices. There is a clear need for a federal mandate of a higher level of closed-captioning than already exists. The intent of Congress in creating the must-carry provisions of the 1992 Cable Act and the FCC in promulgating its regulations for carriage requirements for cable system operators was clearly to address the vexing problems of television programs containing important line 21 closed-captioning data becoming indecipherable in the process of being distributed to the general public through its cable systems. However, the FCC should consider unacceptable the current practice of television programming suppliers in allowing the many closed captioned programs carried by to be aired or transmitted with faulty, indecipherable, or absent line 21 closed-captioning data.

Since the FCC has already seen fit to make this requirement mandatory on broadcast stations that fall within the "must carry" provision, the current climate of the cable regulatory conditions, technological advances, and the market is such that the public interest requires the further expansion of closed captioning authority of the FCC to encompass the requirement of ensuring that any programming material originating within their source retain the integrity of the line 21 closed captioning material throughout any part of the transmission, editing and carriage process.

Broadcast stations must be compelled to ensure that any programming material they receive utilize line 21 signals, if such exist in the marketplace for that particular program. They should also be compelled to ensure that any programming material originating within their cable entity include line 21 signals if such exist, as well as to undertake steps to retain the integrity of line 21 signals during editing, compression, or any other changes made to the material in preparation for supply to the viewing public, including monitoring procedures to verify captioning data is being broadcast appropriately.

In this type of regulatory framework, there would be a responsibility on each level. For instance, a parent network supplying a program to a local station or a cable service provider would check to see if closed captioning exists for that particular programming material. If such exist, the parent network would either request that its supplier provide the material with closed captions included, or contact the source of the closed captioning service and include it with the programming material before it is sent to the local station or cable service provider. The local station or the cable service provider would similarly ensure that the material they receive from its parent network contain closed captioning, if such exist, and air the program with the closed captions intact.

This arrangement would involve minimal adjustment to current corporate practices through the use of checklists. The establishment of a national database containing a list of programs for which closed captioning material exists on the market, and the source of closed captioning (e.g. VITAC, National Captioning Institute, etc.) would very likely facilitate the search by each level in ascertaining whether closed captioning exists for a given program.

The need for such a regulatory framework exists because of the effort it takes a viewer to remedy an existing problem with closed captioning for a given program.The difficulty lies in locating the correct person with whom to share a dissatisfaction with the captioning service, locating the source of the problem whether it occurs at the local broadcast, network or programming supply levels, and ensuring it doesn't happen again. The viewer is forced to do this for each instance this occurs, with different networks, cable service providers, and broadcast stations, each with their own numerous representatives. The obligation to engage in proactive procedures to ensure the integrity and/or existence of closed captioning

should be placed on the television entities themselves, not on the viewer who have little resources, technical knowledge, and the time to devote to such a daunting task. This author has personally heard hundreds, if not thousands, of complaints regarding the difficulty in resolving recurrent problems with closed captioning in situations ranging from specific programs, an entire network, and a television broadcast station showing its entire programming absent closed captioning when closed captions were slated for 40% of its programming schedule. The general sentiment has been that of sincere frustration and feelings of powerlessness.

Conclusion

The existing practices of television entities as it exists (showing earlier-captioned programs without closed captions and/or allowing corruption of captioning quality) seem to resemble the practice of installing a wheelchair ramp at a facility, then removing the ramp during a change of ownership or renovations. Such practice is exactly the type strongly discouraged by the Americans with Disabilities Act, clearly frowned upon by the FCC, and would hinder the continuing growth and development of increasing participation of the disabled in mainstream society. This simple failure to ensure the continuity of closed captioning material available for programming material throughout its lifetime will result in the stifling of the expansion of video and television program materials accessible to those who rely on closed captions, and perhaps even reverse its growth. Ensuring continuity and accuracy would by itself increase the amount of closed-captioned programs by ten to twenty percent both on broadcast and cable stations (many of which rely on syndicated reruns for much of its programming).

Broadcast stations should ensure that any programming material they receive utilize line 21 closed-captioning, if such exist in the marketplace for that particular program.[6] They must also ensure that any programming material originating within the broadcast entity include line 21 signals if such exist, as well as to undertake steps to retain the integrity of line 21 signals throughout any part of the transmission, editing and carriage process, including monitoring procedures to

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[6] This may be accomplished by several means. An industry-based solution would be a television program material purchaser including in a standard contract a clause stating that any programming material supplied for broadcast by third parties, parent company, or any other source of programming, must contain uncorrupted and legible line 21 closed-captioning data *if such exist*. This would place a contractual obligation upon the supplier to ensure that buyer obtains the full value of the programming material acquired, and avoid the subsequent exclusion of a large group of consumer viewers by taking steps to retain the integrity of closed captioning data throughout the process of providing programming materials.

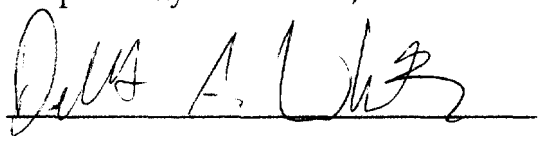
verify captioning data is being broadcast appropriately. [7]

This author strongly oppose any "grandfathering" of equipment that actively interferes or prevents line 21 closed captioning signals. Allowing any such equipment to continue to be utilized would result in a mass exclusion of the viewing public that was specifically targeted by the initial act of providing closed captions. Again, the analogy of removing wheelchair ramps surfaces here.

The television and cable stations should also undertake regular internal review procedures to identify and correct whatever problems(s) may exist that cause captioning to be received or transmitted in an indecipherable manner.

As the FCC contemplates expansion of its role in closed captioning, it should take in consideration the very real need to ensure the continuity and integrity of closed captioning for existing programs. If this is not done, the value of the program to the viewing public declines and the initial public good created by the service of providing closed-captions is substituted with a void that frustrates and disappoints viewers for whom the benefit was created.

Respectfully Submitted,



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[7] Many of cases in which the line 21 closed captioning data are corrupted during broadcast can be averted by simply supplying a monitor for the purpose of verifying the clarity and integrity of closed captioning, and having it checked at regular intervals the same way broadcasters regularly check its signals for video and audio integrity. It would also help to provide a hotline that hearing-impaired viewers can call to notify the broadcast station that the closed-captioning data is either corrupted or absent (since many of the errors occur during primetime and on weekends, this phone line should available to communicate with the station during these times).